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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 28, 2016

Ron Davis, Burbank Water and Power General Manager
Claudia Fierro, Environmental Compliance Coordinator
Burbank Water Power
164 W. Magnolia Blvd.
Burbank, CA 91502

Claudia Fierro, Environmental and Safety Manager
City of Burbank
150 N. Third Street
Burbank, CA 91502

Zizette Mullins, City Clerk
Burbank City Hall
275 East Olive Avenue
Burbank, CA 91502

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act

Dear Mr. Davis and Ms. Fierro:

I am writing on behalf of Los Angeles Waterkeeper ("LAW") in regard to violations of the Clean Water Act (the "Act") that LAW believes are occurring at Burbank Water and Power's industrial facilities located at 110 W Magnolia Blvd. and 164 W Magnolia Blvd. in Burbank, California (collectively "Facility"). This letter is being sent to the City of Burbank, Burbank Water and Power, Ron Davis, and Claudia Fierro as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "BWP").

This letter addresses BWP's unlawful discharge of pollutants from the Facility into the Burbank Western Channel. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by

Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, LAW refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, LAW hereby places BWP on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, LAW intends to file suit in federal court against BWP under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

LAW is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, LAW has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. LAW is dedicated to the preservation, protection, and defense of the inland and coastal surface and groundwaters of Los Angeles County from all sources of pollution and degradation. To further this mission, LAW actively seeks federal and state implementation of the Clean Water Act. Where necessary, LAW directly initiates enforcement actions on behalf of itself and its members.

Members of LAW reside in Los Angeles County, and near the Burbank Western Channel, Los Angeles River, and Pacific Ocean (hereinafter "Receiving Waters"). As explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. LAW members use the Receiving Waters to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and run. Additionally, LAW members use the waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs LAW members' use and enjoyment of these waters. Thus, the interests of LAW's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and the General Permit.

The Facility is comprised of two separately permitted, adjacent facilities. One facility is called the Magnolia Power Project ("MPP"). The Waste Discharger Identification Number

("WDID") for the MPP listed on documents submitted to the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") is 4 19I019639. The other facility is called the Burbank Water and Power Facility, which has a WDID of 4 19I000949. BWP has prepared a single Storm Water Pollution Prevention Plan ("SWPPP") for the two facilities and refers to them collectively as the "BWP Campus." The goal of the BWP Campus is to produce and convey electricity to customers within the City of Burbank.

BWP has filed separate Notices of Intent to comply with the General Permit ("NOI") for each facility. For MPP, BWP certifies that MPP is classified under SIC code 4911. For the Burbank Water and Power Facility, BWP certifies that the facility is classified under SIC code 4911 and 3612.

The Facility is fully paved and covers an area of 22.5 acres. The Facility's storm water management system is fully integrated between the two facilities. The Facility collects through a system of drop inlets and storm drain pipes and discharges storm water through a single outfall directly into the Burbank Western Channel. On information and belief, LAW alleges the outfall contains storm water that is commingled with runoff from the Facility from areas where industrial processes occur. The Burbank Western Channels flows into Reach 4 of the Los Angeles River, which flows into Reaches 1, 2, and 3 of the Los Angeles River, and ultimately flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay.

The Regional Board has identified beneficial uses of the Los Angeles River, including its tributary, the Burbank Western Channel, the Los Angeles River Estuary, and the San Pedro Bay and established water quality standards for these waters in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties", generally referred to as the Basin Plan. *See* http://www. waterboards.ca.gov/losangeles/ water_issues/programs/basin_plan/. The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, rare, threatened, or endangered species, preservation of biological habitats, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Los Angeles River and Burbank Western Channel for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life." *Id.* at 3-38. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not

contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." *Id.* at 3-29. The Basin Plan provides that "[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-37. The Basic Plan provides that "[t]he pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges." *Id.* at 3-35. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3-24. The Basin Plan provides that "[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-26. The Basin Plan provides that "[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses." *Id.* at 3-25. The Basin Plan provides that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at 3-38. The Basin Plan provides that "[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses." *Id.* at 3-37.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC") and for copper of 0.013 mg/L (CMC). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).[1]

The EPA 303(d) List of Water Quality Limited Segments lists the Burbank Western Channel as impaired for copper, lead, and trash, among other pollutants. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml. Reach 4 of the Los Angeles River, the next segment downstream, is listed as impaired for those same pollutants, as well as ammonia. Reach 3 of the Los Angeles River is impaired for copper, lead, pathogens, nutrients, and trash. Reach 2 of the Los Angeles River is impaired for trash, oil, nutrients, pathogens, copper, and lead. Reach 1 of the Los Angeles River is impaired for zinc, lead, copper, trash, pH, nutrients, and pathogens, among other pollutants. The Los Angeles River Estuary is impaired for trash and sediment toxicity, among other pollutants. San Pedro Bay is impaired for sediment toxicity, among other pollutants.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[2] The following benchmarks have been established for pollutants discharged by BWP: pH – 6.0 -

[1] The values for zinc and copper are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

[2] The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L, and copper – 0.0332 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; and copper – 0.0332 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit

BWP has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of

the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

BWP has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, iron, zinc, and copper in violation of the General Permit. BWP's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling/Observation Date	Parameter	Observed Concentration/ Conditions	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
9/15/2015	pH	8.68	6.5 – 8.5	MH S/E of CT
12/2/2014	pH	6.41	6.5 – 8.5	MH S/E of CT
12/2/2014	pH	6.43	6.5 – 8.5	MH Float Bldg
3/17/2012	pH	6.01	6.5 – 8.5	Manhole
3/6/2016	Zinc	0.392 mg/L	0.12 mg/L (CMC)	MH S/E of CT
1/31/2016	Zinc	0.373 mg/L	0.12 mg/L (CMC)	MH S/E of CT
9/15/2015	Zinc	0.438 mg/L	0.12 mg/L (CMC)	MH S/E of CT
7/22/2015	Zinc	4.19 mg/L	0.12 mg/L (CMC)	MH S/E of CT
3/6/2016	Copper	0.0292 mg/L	0.013 mg/L (CMC)	MH S/E of CT
1/31/2016	Copper	0.0213 mg/L	0.013 mg/L (CMC)	MH S/E of CT
7/22/2015	Copper	0.28 mg/L	0.013 mg/L (CMC)	MH S/E of CT
4/7/2015	Narrative	Debris	Basin Plan at 3-26	Storm Drain Across from Floating Building

2/23/2015	Narrative	Cloudy	Basin Plan at 3-37; Basin Plan at 3-38	Storm Drain Across from Floating Building
1/30/2015	Narrative	Debris	Basin Plan at 3-26	Manhole Across from Outfall
1/30/2015	Narrative	Cloudy; Sheen; Debris	Basin Plan at 3-37; Basin Plan at 3-38; Basin Plan at 3-29; Basin Plan at 3-26	Storm Drain Across from Floating Building
12/2/2014	Narrative	Discoloration; Cloudy; Debris	Basin Plan at 3-25; Basin Plan at 3-37; Basin Plan at 3-38; Basin Plan at 3-26	Manhole Across from Outfall
12/2/2014	Narrative	Discoloration; Cloudy; Debris	Basin Plan at 3-25; Basin Plan at 3-37; Basin Plan at 3-38; Basin Plan at 3-26	Storm Drain Across from Floating Building
11/1/2014	Narrative	Discoloration; Cloudy	Basin Plan at 3-25; Basin Plan at 3-37; Basin Plan at 3-38	Manhole Across from Outfall
11/1/2014	Narrative	Discoloration; Cloudy	Basin Plan at 3-25; Basin Plan at 3-37; Basin Plan at 3-38	Storm Drain Across from Floating Building
2/28/2014	Narrative	Discoloration	Basin Plan at 3-25	Manhole across from outfall
2/28/2014	Narrative	Discoloration	Basin Plan at 3-25	Manhole Covered Parking
12/19/2013	Narrative	Discoloration	Basin Plan at 3-25	Manhole across from outfall
12/19/2013	Narrative	Discoloration	Basin Plan at 3-25	Manhole Covered Parking
11/21/2013	Narrative	Discoloration	Basin Plan at 3-25	Manhole across from outfall
11/21/2013	Narrative	Discoloration	Basin Plan at 3-25	Manhole Covered Parking
10/11/2012	Narrative	Cloudy; Debris	Basin Plan at 3-37; Basin Plan at 3-38; Basin Plan at 3-26	Monitoring Point 1 – outfall to Burbank Western Channel

12/12/2011	Narrative	Discoloration	Basin Plan at 3-25	Manhole 001
10/5/2011	Narrative	Discoloration	Basin Plan at 3-25	Manhole 001

The information in the above table reflects data gathered from BWP's self-monitoring during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, as well as the 2015-2016 reporting year. LAW alleges that since at least October 5, 2011, and continuing through today, BWP has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 (Basin Plan at 3-35)
- Zinc – 0.12 mg/L (CMC)
- Copper – 0.013 mg/L (CMC)
- Discoloration – waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. (Basin Plan at 3-25)
- Sheen – waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses. (Basin Plan at 3-29)
- Debris – waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. (Basin Plan at 3-26)
- Cloudiness – waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses (Basin Plan at 3-37); waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. (Basin Plan at 3-38)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	**Parameter**	**Observed Concentration**	**EPA Benchmark Value /Annual NAL**	**Outfall (as identified by the Facility)**
11/21/2013	Total Suspended Solids	150 mg/L	100 mg/L	Manhole
10/11/2012	Total Suspended Solids	143 mg/L	100 mg/L	Manhole
7/22/2015	Iron	1.7 mg/L	1 mg/L	MH S/E of CT

2015-2016 Reporting Year	Iron	1.06 mg/L	1 mg/L	All discharge points[3]
12/2/2014	Iron	1.57 mg/L	1 mg/L	MH S/E of CT
12/2/2014	Iron	1.05 mg/L	1 mg/L	MH Float Bldg
11/1/2014	Iron	2.21 mg/L	1 mg/L	MH S/E of CT
11/1/2014	Iron	1.36 mg/L	1 mg/L	MH Float Bldg
12/19/2013	Iron	1.49 mg/L	1 mg/L	Manhole
11/21/2013	Iron	3 mg/L	1 mg/L	Manhole
1/24/2013	Iron	1.63 mg/L	1 mg/L	Manhole
10/11/2012	Iron	4.49 mg/L	1 mg/L	Manhole
3/17/2012	Iron	2.04 mg/L	1 mg/L	Manhole
1/21/2012	Iron	2.16 mg/L	1 mg/L	Manhole
3/6/2016	Zinc	0.392 mg/L	0.26 mg/L	MH S/E of CT
1/31/2016	Zinc	0.373 mg/L	0.26 mg/L	MH S/E of CT
9/15/2015	Zinc	0.438 mg/L	0.26 mg/L	MH S/E of CT
7/22/2015	Zinc	4.19 mg/L	0.26 mg/L	MH S/E of CT
2015-2016 Reporting Year	Zinc	1.35 mg/L	0.26 mg/L	All discharge points[4]
7/22/2015	Copper	0.28 mg/L	0.0332 mg/L	MH S/E of CT
2015-2016 Reporting Year	Copper	0.085 mg/L	0.0332 mg/L	All discharge points[5]

The information in the above table reflects data gathered from BWP's self-monitoring during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons and the 2015-2016 reporting year. Further, LAW notes that the Facility has already exceeded the annual NALs for iron, zinc, and copper during the 2015-2016 reporting year. LAW alleges that since at least October 28, 2011, BWP has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for TSS, iron, zinc, and copper.

LAW's investigation, including its review of BWP's SWPPP, BWP's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that BWP has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, iron, zinc, copper, and

[3] This value is represents the average of all iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1 mg/L, the annual NAL for iron.
[4] This value is represents the average of all zinc measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.26 mg/L, the annual NAL for zinc.
[5] This value is represents the average of all copper measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.0332 mg/L, the annual NAL for copper.

potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. BWP was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, BWP is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. LAW alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since October 28, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which LAW alleges that BWP has discharged storm water containing impermissible and unauthorized levels of pH, TSS, iron, zinc, copper, as well as storm water that is discolored, cloudy, and contains debris, in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[6]

Further, LAW puts BWP on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which BWP must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including BWP's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[71] Finally, even if BWP submits an Exceedance Response Action Plan(s) pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the

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[6] The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Glendale, approximately 5 miles from the Facility. The data was accessed via http://ipm.ucanr.edu/calludt.cgi/WXDESCRIPTION?STN=GLENDALE.A (Last accessed on October 27, 2016).

[7] The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII

Act. Each discharge of storm water constitutes an unauthorized discharge of TSS, iron, zinc, copper, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BWP is subject to penalties for violations of the General Permit and the Act since October 28, 2011.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

During the 2015-2016 reporting year, BWP analyzed its storm water discharges for zinc and copper and found that the concentrations of each were significantly in excess of the average NAL values as well as the concentrations set forth in the California Toxics Rule. Thus, on information and belief, LAW alleges that zinc and copper is a pollutant likely to be present in BWP's storm water discharges in significant quantities and that those pollutants have been present in BWP's storm water discharges during the past five years. On information and belief, LAW alleges that BWP has never otherwise analyzed its storm water discharges for zinc and

copper. This failure to analyze for zinc and copper in each sampling event results in at least 16 violations of the General Permit.

In addition, under the 2015 Permit, a facility must analyze collected samples for "[a]dditional applicable industrial parameters related to receiving waters with 303(d) listed impairments or approved TMDLs based on the assessment in Section X.G.2.a.ix." 2015 Permit, Section XI(B)(6)(d). According to BWP's 2015-2016 Annual Report, ammonia is a listed pollutant in the impaired watershed [Reach 4 of the Los Angeles River] and is present at the Facility. Its presence at the Facility is also described in the Facility's SWPPP. During the 2015-2016 reporting year, BWP failed to analyze its storm water discharges for ammonia. This results in least 4 violations of the General Permit.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BWP is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since October 28, 2011.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to LAW indicates that BWP has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide a sufficient explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, BWP has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

LAW puts BWP on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. BWP is in ongoing violation of the General Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. BWP is subject to civil penalties for all violations of the CWA occurring since October 28, 2011.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm

water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Despite these clear BMP requirements, BWP has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP. The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, BWP has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

LAW puts BWP on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and LAW will include additional violations as information and data become available. BWP is subject to civil penalties for all violations of the CWA occurring since October 28, 2011.

III. Persons Responsible for the Violations.

LAW puts Burbank Water Power, the City of Burbank, Ron Davis, and Claudia Fierro on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, LAW puts Burbank Water Power, the City of Burbank, Ron Davis, and Claudia Fierro on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of Los Angeles Waterkeeper is as follows:

Bruce Reznik, Executive Director
LA Waterkeeper
120 Broadway, Suite 105
Santa Monica, CA 90401
Tel. (310) 394-6162
bruce@lawaterkeeper.org

V. Counsel.

LAW has retained legal counsel to represent it in this matter. Please direct all communications to:

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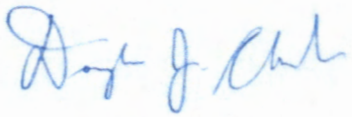
VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects BWP to a penalty of up to $37,500 per day per violation for all violations occurring since October 28, 2011 up to and including November 2, 2015, and up to $51,570 for violations occurring after November 2, 2015. In addition to civil penalties, LAW will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

LAW believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. LAW intends to file a citizen suit under Section 505(a) of the Act against BWP and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, LAW would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, LAW suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. LAW does not intend to

delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Los Angeles Waterkeeper

SERVICE LIST – via certified mail

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Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
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San Francisco, CA, 94105

Samuel Unger, Executive Officer II
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

ATTACHMENT A

Rain Dates, Burbank Water and Power, Burbank, CA

11/6/2011	5/6/2013	5/15/2015
11/12/2011	10/9/2013	5/16/2015
11/20/2011	11/21/2013	7/18/2015
12/12/2011	11/29/2013	7/19/2015
12/13/2011	12/19/2013	9/15/2015
1/21/2012	12/20/2013	9/16/2015
1/23/2012	2/6/2014	9/17/2015
2/27/2012	3/1/2014	12/23/2015
3/17/2012	3/5/2014	12/27/2015
3/18/2012	4/1/2014	12/29/2015
3/25/2012	4/2/2014	1/8/2016
4/11/2012	11/26/2014	1/31/2016
4/13/2012	11/30/2014	2/17/2016
10/11/2012	12/2/2014	2/18/2016
11/17/2012	12/3/2014	2/19/2016
11/29/2012	12/12/2014	2/20/2016
11/30/2012	12/16/2014	2/22/2016
12/1/2012	12/17/2014	2/23/2016
12/2/2012	12/30/2014	3/2/2016
12/3/2012	1/9/2015	3/5/2016
12/13/2012	1/10/2015	3/10/2016
12/14/2012	1/11/2015	4/9/2016
12/18/2012	1/26/2015	4/16/2016
12/24/2012	2/22/2015	5/4/2016
12/26/2012	2/23/2015	5/5/2016
2/19/2013	3/2/2015	10/17/2016
3/8/2013	4/7/2015	10/24/2016
3/9/2013	4/25/2015	
4/15/2013	5/14/2015	